

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Ehret et al. Art Unit : 3624
Serial No. : 10/815,131 Examiner : Jaime Cardenas-Navia
Filed : March 31, 2004 Conf. No. : 9171
Title : CAPACITY PLANNING OF RESOURCES

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

(1) Real Party in Interest

SAP Aktiengesellschaft, the assignee of this application, is the real party in interest.

(2) Related Appeals and Interferences

There are no related appeals or interferences.

(3) Status of Claims

Claims 1, 2, 5-9, 11-13, 15, and 16 are pending and stand rejected under 35 U.S.C. § 102(e) in the final Office Action dated May 29, 2009. Claims 1 and 8 are independent. A notice of appeal was filed on September 28, 2009.

Applicants appeal the rejections of all pending claims 1, 2, 5-9, 11-13, 15, and 16.

(4) Status of Amendments

All amendments have been entered. A listing of the current claims is provided in the Appendix provided with this Appeal Brief.

(5) Summary of Claimed Subject Matter

The claimed subject matter relates generally to scheduling a request for a resource where the request “includes a date range and the estimated amount of time needed from the resource, but does not include concrete date and time facts.” (Spec. 2:8-10). More specifically, the claimed subject matter relates to refining a portion a previously scheduled “non-concrete

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request" (e.g., a request for a resource that does not include concrete data and time facts) to a concrete date and time. (*See, e.g.*, spec. 4:18-21).

Referring to FIGS. 2B-C (reproduced below), they contain an illustrative example where a non-concrete request for sixteen hours' use of a resource is received, and eight hours of the non-concrete request are later refined by a concrete request. Particularly, a "resource planning application [] receives a non-concrete request for sixteen hours of service from the resource sometime on the dates of June 10-12 [and] . . . evenly distributes the non-concrete request into portions 231, 232, and 233 over the three-day period 200." (Spec. 6:30-7:11). The resource planning application receives a "refinement [which] is a concrete request that specifies the resource must serve eight hours (out of the originally requested sixteen hours) on June 11 during the time slot of 8:00 AM to 4:00 PM." (Spec. 7:24-25). Based upon the refinement, "the concrete portion 240 is scheduled in the electronic schedule according to the time slots specified in the concrete request (8:00 AM to 4:00 PM)," (spec. 7:31-8:2), and "the remaining eight hours [are redistributed] into portions 251 and 252 using the modified availability information." (Spec. 8:16-17).

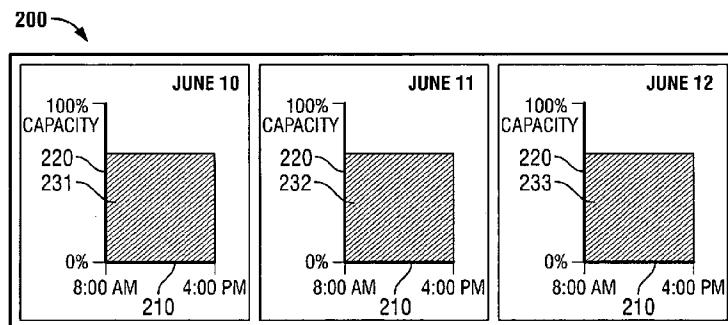


FIG. 2B

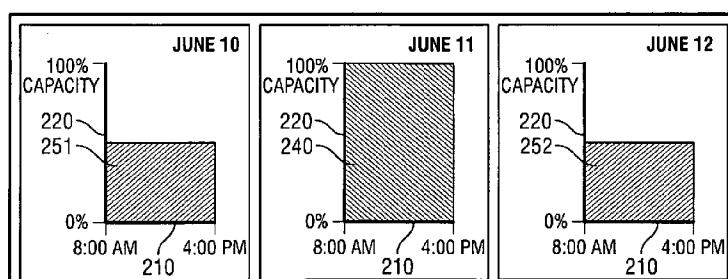


FIG. 2C

Applicants' claims bear out aspects of the example refinement features above with regard to FIGS. 2A-C. For example, claim 1 recites "receiving at the computer system a second scheduling request for the resource that refines the first scheduling request, the second scheduling request specifying that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period." Additionally, claim 1 recites "scheduling by the computer system in an electronic schedule the portion of the requested amount of time in the specific time slot."

Independent claim 1 is directed to a computer-implemented method. The method recites steps of "receiving . . . a first scheduling request for a resource," "receiving . . . a second scheduling request for the resource that refines the first scheduling request," "scheduling . . . the requested amount of time in the specific time slot," and "scheduling . . . a remaining portion of the requested amount of time within the requested time period except within the specific time slot."

Regarding the "receiving . . . a first scheduling request for a resource" step, claim 1 recites that the first scheduling request is received "at a computer system" and that "the first scheduling request spec[ifies] that the resource is to be scheduled for a requested amount of time sometime within a requested time period, the requested amount of time being less than a maximum time amount that the resource is usable during the requested time period, wherein due to the first scheduling request the resource has an availability for the requested time period less than one hundred percent." For instance, a resource planning application 122 that is part of a computer system 100 can receive "non-concrete requests that include a date range and the estimated amount of time needed from the resource, but does not include concrete date and time facts." (Spec. 3:20-4:27). In an illustrative example, "[i]f a client has requested the consultant to work on a project that requires only four hours on June 10, the impact on the consultant's availability would be equivalent to the resource being used at 50% capacity for that day ([4 hours of scheduled time]/[8 hours of available time] = 50% use of total availability)." (Spec. 6:15-18).

Regarding the "receiving . . . a second scheduling request for the resource that refines the first scheduling request" step, claim 1 recites that the second scheduling request is received "at the computer system" and that "the second scheduling request spec[ifies] that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time

period, the portion of the requested amount of time being less than the requested amount of time.” For instance, the resource planning application 122 that is part of the computer system 100 can receive “a subsequent concrete request, which specifies concrete date and time facts to reserve at least a portion of the resource’s time that was originally requested by the non-concrete request.” (Spec. 3:20-4:27). In an illustrative example, “the non-concrete request may ask for a consultant to work for forty hours (i.e., the estimated amount of time) on a project at any time in the month of January (i.e., date range of January 1-31)” and the subsequent “concrete request may ask for the consultant to work on a particular aspect of the project for eight hours on January 15 during the time slot of 8:00 AM to 4:00 PM, thus permitting the remaining thirty-two hours from the original request to be served on other days in January.” (Spec. 4:10-27).

Regarding the “scheduling . . . the requested amount of time in the specific time slot” step, claim 1 recites that scheduling is performed “by the computer system in an electronic schedule” and that “scheduling the portion of the requested amount of time causes the availability of the resource for the specific time slot to be zero percent.” For example, a resource planning application 122 that is part of the computer system 100 can “schedule a new assignment for that worker in a time slot of an electronic schedule.” (Spec. 3:20-4:9). The availability of a resource can range from 0% to 100% for a specific time slot and refining a non-concrete request with a concrete request can cause the availability for the resource to be 0% (or used at 100% capacity) for the time period specified by the concrete request. (Spec. 5:29-6:21). In an illustrative example, “the refinement [can be] a concrete request that specifies the resource must serve eight hours (out of the originally requested sixteen hours) on June 11 during the time slot of 8:00 AM to 4:00 PM,” which can result in an availability of zero percent for the resource for the specific time slot 8:00 AM to 4:00 PM. (Spec. 7:22-8:4).

Regarding the “scheduling . . . a remaining portion of the requested amount of time within the requested time period except within the specific time slot” step, claim 1 recites that scheduling is performed “by the computer system in the electronic schedule” and that “scheduling the remaining portion of the requested amount of time causes the availability of the resource for a remaining portion of the requested time period to be greater than zero percent and less than one hundred percent.” For example, a resource planning application 122 that is part of the computer system 100 can “schedule a new assignment for that worker in a time slot of an

electronic schedule.” (Spec. 3:20-4:9). Referring to FIG. 3C (reproduced below) as an illustrative example,

After scheduling the concrete refinement in the electronic schedule, the resource planning application redistributes the remaining three hours from the non-concrete request (seven hours) that were not accounted for by the concrete refinement (four hours). The application does not distribute the remaining three hours into three 1-hour portions (one portion for each day), which would cause the resource to be overbooked on August 13 (scheduled at 125% capacity). Rather, the resource planning application accounts for the portion 340 reserved by the concrete refinement and the previously-accepted portion 325 reserved by the separate concrete request by updating the resource's availability information. Then, the resource planning application redistributes the remaining three hours into portions 351 and 352 using the updated availability information. Thus, the resource planning application schedules the non-concrete portions 351 and 352 into the electronic schedule, but not in the time slot reserved by the previously-accepted concrete request (12:00-3:00 PM on August 12) or by the concrete refinement (12:00-4:00 PM on August 13). In this example, the remaining three hours from the non-concrete request are distributed into a portion 351 on August 12 and a portion on August 14 that have equal heights on the vertical axis 320.

(Spec. 10:22-11:5).

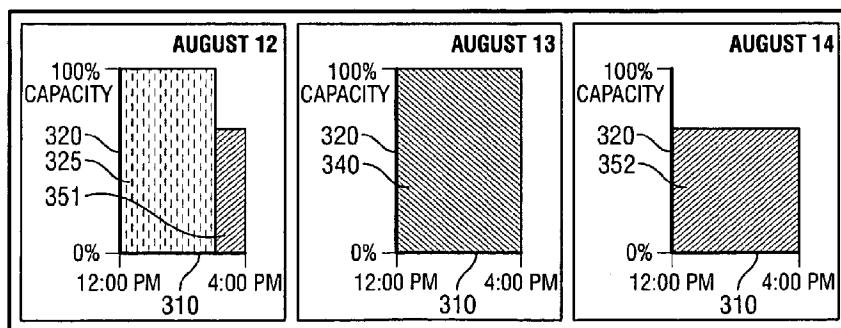


FIG. 3C

Independent claim 8 is directed to a “computer program product tangibly embodied in an information carrier, the computer program product including instructions that when executed cause a processor to perform operations comprising” For example, a machine-readable storage device and memory are disclosed. (Spec. 13:3-31).

The operations include “receive . . . a first scheduling request for a resource,” “receive . . . a second scheduling request for the resource that refines the first scheduling request,” “schedule . . . the requested amount of time in the specific time slot,” and “schedule . . . a remaining portion of the requested amount of time within the requested time period except within the specific time slot.”

Regarding the “receive . . . a first scheduling request for a resource” step, claim 8 recites that the first scheduling request is received “at a computer system” and that “the first scheduling request specif[ies] that the resource is to be scheduled for a requested amount of time sometime within a requested time period, the requested amount of time being less than a maximum time amount that the resource is usable during the requested time period, wherein due to the first scheduling request the resource has an availability for the requested time period less than one hundred percent.” For instance, a resource planning application 122 that is part of a computer system 100 can receive “non-concrete requests that include a date range and the estimated amount of time needed from the resource, but does not include concrete date and time facts.” (Spec. 3:20-4:27). In an illustrative example, “[i]f a client has requested the consultant to work on a project that requires only four hours on June 10, the impact on the consultant’s availability would be equivalent to the resource being used at 50% capacity for that day ([4 hours of scheduled time]/[8 hours of available time] = 50% use of total availability).” (Spec. 6:15-18).

Regarding the “receive . . . a second scheduling request for the resource that refines the first scheduling request” step, claim 8 recites that the second scheduling request is received “at the computer system” and that “the second scheduling request specif[ies] that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period, the portion of the requested amount of time being less than the requested amount of time.” For instance, the resource planning application 122 that is part of the computer system 100 can receive “a subsequent concrete request, which specifies concrete date and time facts to reserve at least a portion of the resource’s time that was originally requested by the non-concrete request.” (Spec. 3:20-4:27). In an illustrative example, “the non-concrete request may ask for a consultant to work for forty hours (i.e., the estimated amount of time) on a project at any time in the month of January (i.e., date range of January 1-31)” and the subsequent “concrete request may ask for the consultant to work on a particular aspect of the project for eight hours on January

15 during the time slot of 8:00 AM to 4:00 PM, thus permitting the remaining thirty-two hours from the original request to be served on other days in January.” (Spec. 4:10-27).

Regarding the “schedule . . . the requested amount of time in the specific time slot” step, claim 8 recites that scheduling is performed “by the computer system in an electronic schedule” and that “scheduling the portion of the requested amount of time causes the availability of the resource for the specific time slot to be zero percent.” For example, a resource planning application 122 that is part of the computer system 100 can “schedule a new assignment for that worker in a time slot of an electronic schedule.” (Spec. 3:20-4:9). The availability of a resource can range from 0% to 100% for a specific time slot and refining a non-concrete request with a concrete request can cause the availability for the resource to be 0% (or used at 100% capacity) for the time period specified by the concrete request. (Spec. 5:29-6:21). In an illustrative example, “the refinement [can be] a concrete request that specifies the resource must serve eight hours (out of the originally requested sixteen hours) on June 11 during the time slot of 8:00 AM to 4:00 PM,” which can result in an availability of zero percent for the resource for the specific time slot 8:00 AM to 4:00 PM. (Spec. 7:22-8:4).

Regarding the “schedule . . . a remaining portion of the requested amount of time within the requested time period except within the specific time slot” step, claim 8 recites that scheduling is performed “by the computer system in the electronic schedule” and that “scheduling the remaining portion of the requested amount of time causes the availability of the resource for a remaining portion of the requested time period to be greater than zero percent and less than one hundred percent.” For example, a resource planning application 122 that is part of the computer system 100 can “schedule a new assignment for that worker in a time slot of an electronic schedule.” (Spec. 3:20-4:9). Referring to FIG. 3C (reproduced above) as an illustrative example,

After scheduling the concrete refinement in the electronic schedule, the resource planning application redistributes the remaining three hours from the non-concrete request (seven hours) that were not accounted for by the concrete refinement (four hours). The application does not distribute the remaining three hours into three 1-hour portions (one portion for each day), which would cause the resource to be overbooked on August 13 (scheduled at 125% capacity). Rather, the resource planning

application accounts for the portion 340 reserved by the concrete refinement and the previously-accepted portion 325 reserved by the separate concrete request by updating the resource's availability information. Then, the resource planning application redistributes the remaining three hours into portions 351 and 352 using the updated availability information. Thus, the resource planning application schedules the non-concrete portions 351 and 352 into the electronic schedule, but not in the time slot reserved by the previously-accepted concrete request (12:00-3:00 PM on August 12) or by the concrete refinement (12:00-4:00 PM on August 13). In this example, the remaining three hours from the non-concrete request are distributed into a portion 351 on August 12 and a portion on August 14 that have equal heights on the vertical axis 320.

(Spec. 10:22-11:5).

(6) Grounds of Rejection to be Reviewed on Appeal

Pending claims 1, 2, 5-9, 11-13, 15, and 16 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Publication No. 2005/0065832 to Virta (“the Virta reference”). Claims 1 and 8 are independent. Applicants are appealing the rejections of all claims 1, 2, 5-9, 11-13, 15, and 16.

(7) Argument

For the following reasons, Applicants respectfully assert that the present claims are patentable over the references of record, and request that the above rejections be reversed.

I. Rejection of claims 1, 2, 5-9, 11-13, 15, and 16 – The Office Action fails to set forth a *prima facie* case of anticipation with respect to the Virta reference.

The Office Action fails to set forth a *prima facie* case of anticipation under 35 U.S.C. § 102(e) with regard to the Virta reference and claims 1, 2, 5-9, 11-13, 15, and 16. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Additionally, “[i]nherency . . . may not be established by probabilities or possibilities. The mere fact that a

certain thing *may* result from a given set of circumstances is not sufficient.” *Ex parte Whalen*, 89 USPQ.2d 1078, 1083 (BPAI 2008) (quoting *In re Oelrich*, 666 F.2d 578, 581; 212 USPQ 323 (CCPA 1981)). Furthermore, when the Patent and Trademark Office makes a finding of anticipation, it is required to “provide an administrative record showing the evidence on which the findings are based, accompanied by the agency's reasoning in reaching its conclusion.” *In re Lee*, 277 F.3d 1338, 1342 (Fed. Cir. 2002).

The Office Action fails to provide sufficient evidence that the Virta reference discloses each element of Applicants’ claims 1, 2, 5-9, 11-13, 15, and 16 either expressly or inherently. In particular, the Office Action rejects claims 1, 8, 15, and 16 by making up an example that is not disclosed or suggested by the Virta reference. (*See* Office Action at pp. 5-9). Through the made-up example, the Office Action appears to assert that it may be possible to arrive at Applicants’ claimed subject through the Virta reference. However, following the reasoning by the Board of Patent Appeals and Interferences (BPAI) in *Whalen*, such an assertion that Applicants’ claimed subject matter may result from the Virta reference “is not sufficient.” *Whalen*, 89 USPQ.2d at 1083 (quoting *In re Oelrich*, 666 F.2d 578, 581; 212 USPQ 323 (CCPA 1981)).

The made-up example that is relied upon in the Office Action in rejecting claims 1, 8, 15, and 16, does not track or resemble any of the examples that are actually disclosed within the Virta reference. For instance, as part of the made-up example, the Office Action states that “Jeff [] works 8 hours a day (9:00am-5:00pm) [and] specifies that 50% of every Tuesday must be ‘work undisturbed’ time” and that “because Jeff has an important business meeting from 1:00pm – 2:00pm, he schedules in one hour from 12:00pm – 1:00pm of ‘work undisturbed’ time.” (Office Action at p. 5). However, nowhere does the Virta reference disclose or suggest refinement of a non-concrete scheduling request through a second scheduling request that specifies a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period (nowhere does the Virta reference disclose that “[Jeff] schedules in one hour from 12:00pm – 1:00pm of ‘work undisturbed’ time”). Instead, the Virta reference discloses that a non-concrete scheduling request is received and then adjusted based upon other, non-refining scheduling requests. (*See* Virta at [0022-0023]).

For example, framing an actual example disclosed by the Virta reference in the terminology of Applicants' independent claims 1 and 8, Jerome ("a resource") sets aside at least two hours to be free ("a requested amount of time") during his working day ("a requested time period"). Matt's attempt to schedule a meeting ("a second scheduling request") with Jerome ("the resource") in the morning is within the working day for Jerome ("the requested time period"). However, Matt's meeting request ("the second scheduling request") does not specify that a portion of Jerome's two hours of free time ("the requested amount of time") is to be scheduled in a specific time slot. Instead, Matt's meeting request ("the second scheduling request") specifies that the meeting is to be scheduled in a specific time slot. (*See id.* at [0022]).

Furthermore, the Office Action does not show support in the Virta reference for the majority of the made-up example. For instance, regarding the rejection of claim 1, even though the made-up example in detail discusses each of the four recited steps of claim 1, the Office Action only cites to the Virta reference with respect to a portion of the example pertaining to the first recited step. (*See* Office Action at p. 5). The Virta reference does not support the made-up example.

The BPAI has found similar rejections under 35 U.S.C. § 102 to "not [be] supported by the evidence of record." *Whalen*, 89 USPQ.2d at 1083. For instance, in *Whalen* the BPAI rejected the Examiner's reasoning that a prior art reference disclosed "similar components" as being a "possibility that is not adequate to support a finding of inherent anticipation." *Id.* In *Whalen*, the BPAI went on to hold that "the Examiner has not made out a *prima facie* case that the claimed compositions are anticipated." *Id.*

Here, Virta fails to show several features of the independent claim, as will be discussed in the next section.

As such, the Office Action has failed to set forth a *prima facie* case of anticipation of Applicants' claims 1, 8, 15, and 16 under 35 U.S.C. § 102(e) with regard to the Virta reference. For at least the same reasons, the Office Action has failed to set forth a *prima facie* case of anticipation under 35 U.S.C. § 102(e) with regard to the Virta reference for dependent claims 2, 5-7, 9, and 11-13, which each depend directly or indirectly from either independent claim 1 or 8. Applicants assert that claims 1, 2, 5-9, 11-13, 15, and 16 are patentable over the Virta reference.

II. Rejection of claims 1, 2, 5-9, 11-13, 15, and 16 – The Virta reference does not disclose all of the elements of independent claims 1 and 8.

Applicants pending claims 1, 2, 5-9, 11-13, 15, and 16 are patentable over the Virta reference because the Virta reference does not disclose or suggest all of the elements of Applicants' independent claims 1 and 8. For instance, the Virta reference does not disclose or suggest "the second scheduling request specifying that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period," as recited in independent claims 1 and 8.

Instead, the Virta reference is directed to adjusting a non-concrete scheduling request based upon other requests that do not "specify[] that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period," as recited in claims 1 and 8. Nowhere does the Virta reference teach or suggest "the second scheduling request specifying that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period," as recited in claims 1 and 8 (emphasis added).

Reiterating the example from the Virta reference in the terminology of claims 1 and 8, Jerome ("a resource") sets aside at least two hours to be free ("a requested amount of time") during his working day ("a requested time period"). Matt's attempt to schedule a meeting ("a second scheduling request") with Jerome ("the resource") in the morning is within the working day for Jerome ("the requested time period"). However, Matt's meeting request ("the second scheduling request") does not specify that a portion of Jerome's two hours of free time ("the requested amount of time") is to be scheduled in a specific time slot. Instead, Matt's meeting request ("the second scheduling request") specifies that the meeting is to be scheduled in a specific time slot. (*See* Virta at [0022]).

As such, the Virta reference does not anticipate independent claims 1 or 8. For at least the same reasons, the Virta reference does not anticipate dependent claims 2, 5-7, 9, 11-13, 15, and 16, which depend either directly or indirectly from one of the independent claims.

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Conclusion

Accordingly, for at least the above reasons, Applicants request that the Board overturn the rejections of the pending claims 1, 2, 5-9, 11-13, 15, and 16.

Please apply \$540 for the brief fee and any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: November 3, 2009 _____

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Appendix of Claims

1. (Previously Presented) A computer-implemented method comprising:
receiving at a computer system a first scheduling request for a resource, the first scheduling request specifying that the resource is to be scheduled for a requested amount of time sometime within a requested time period, the requested amount of time being less than a maximum time amount that the resource is usable during the requested time period, wherein due to the first scheduling request the resource has an availability for the requested time period less than one hundred percent;

receiving at the computer system a second scheduling request for the resource that refines the first scheduling request, the second scheduling request specifying that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period, the portion of the requested amount of time being less than the requested amount of time;

scheduling by the computer system in an electronic schedule the portion of the requested amount of time in the specific time slot, wherein scheduling the portion of the requested amount of time causes the availability of the resource for the specific time slot to be zero percent; and

scheduling by the computer system in the electronic schedule a remaining portion of the requested amount of time within the requested time period except within the specific time slot, wherein scheduling the remaining portion of the requested amount of time causes the availability of the resource for a remaining portion of the requested time period to be greater than zero percent and less than one hundred percent.

2. (Previously Presented) The method of claim 1, wherein the resource is a person that provides a service, a machine, a tool, or a workstation.

3-4. (Canceled).

5. (Original) The method of claim 1, wherein the first scheduling request specifies that the resource is to be scheduled for a predetermined number of hours within the requested time period that includes a specific date range.

6. (Original) The method of claim 5, wherein the second scheduling request refines the first scheduling request by requesting that a portion of the predetermined number of hours from the first scheduling request is to be scheduled for the specific time slot on a specific date within the date range.

7. (Original) The method of claim 1, wherein scheduling in the electronic schedule is done to determine a utilization of the resource.

8. (Previously Presented) A computer program product tangibly embodied in an information carrier, the computer program product including instructions that when executed cause a processor to perform operations comprising:

receive at a computer system a first scheduling request for a resource, the first scheduling request specifying that the resource is to be scheduled for a requested amount of time sometime within a requested time period, the requested amount of time being less than a maximum time amount that the resource is usable during the requested time period, wherein due to the first scheduling request the resource has an availability for the requested time period less than one hundred percent;

receive at the computer system a second scheduling request for the resource that refines the first scheduling request, the second scheduling request specifying that a portion of the requested amount of time is to be scheduled in a specific time slot within the requested time period, the portion of the requested amount of time being less than the requested amount of time;

schedule by the computer system in an electronic schedule the portion of the requested amount of time in the specific time slot, wherein scheduling the portion of the requested amount of time causes the availability of the resource for the specific time slot to be zero percent; and

schedule by the computer system in the electronic schedule a remaining portion of the requested amount of time within the requested time period except within the specific time, wherein scheduling the remaining portion of the requested amount of time causes the availability of the resource for a remaining portion of the requested time period to be greater than zero percent and less than one hundred percent.

9. (Previously Presented) The computer program product of claim 8, wherein the executable instructions, when executed, further cause a resource planning application to receive at the computer system all time slots in which the resource is usable within the requested time period.

10 (Canceled).

11. (Previously Presented) The method of claim 1, further comprising: receiving at the computer system all time slots in which the resource is usable within the requested time period according to resource's availability information stored in a database.

12 (Previously Presented) The method of claim 11, wherein the resource's availability information is maintained as a set of time intervals in the database.

13. (Previously Presented) The method of claim 6, further comprising: referring by the computer system to resource's availability information to verify that the availability of the resource for the specific time slot on the specific date is sufficient for the second scheduling request.

14. (Canceled).

15. (Previously Presented) The method of claim 1, wherein the first scheduling request and the second scheduling request are received from a same source.

16. (Previously Presented) The computer program product of claim 8, wherein the first scheduling request and the second scheduling request are received from a same source.

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Evidence Appendix

None

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Related Proceedings Appendix

None